

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the Commission's Own Motion to Assess and Revise the New Regulatory Framework for Pacific Bell and Verizon California Incorporated.

Rulemaking 01-09-001  
(Filed September 6, 2001)

Order Instituting Investigation on the Commission's Own Motion to Assess and Revise the New Regulatory Framework for Pacific Bell and Verizon California Incorporated.

Investigation 01-09-002  
(Filed September 6, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING  
REGARDING PACIFIC BELL TELEPHONE COMPANY'S (PACIFIC'S)  
MOTION TO MODIFY THE SCHEDULE FOR PHASE 2**

**Summary**

This ruling modifies the schedule for Phase 2 of this proceeding to provide the Commission's Telecommunications Division (TD) with additional time to file a report regarding TD's audit of Pacific.

**Background**

TD is currently conducting an audit of Pacific pursuant to Pub. Util. Code § 314.5 and Decision (D.) 94-06-011, D.96-05-036, D.98-10-019, D.98-10-026, and D.01-02-041. Factual issues associated with TD's audit will be addressed in Phase 2 of this proceeding together with factual issues associated with how

service quality has fared under the New Regulatory Framework.<sup>1</sup> The current schedule for Phase 2 is as follows<sup>2</sup>:

<b>Phase 2 Schedule</b>	
<b>Event</b>	<b>Date</b>
Pacific and Verizon File Service Quality Compliance Reports	January 15, 2002
TD Files Pacific Audit Report	January 31, 2002
Pacific Files Response to TD's Audit Report	March 29, 2002
Parties Submit Surveys on Service Quality	April 15, 2002
Written Testimony	Opening Testimony: May 1, 2002 Reply Testimony: June 7, 2002
Motions to Strike	Motions to Strike: June 14, 2002 Replies to Motions: June 28, 2002
Evidentiary Hearings	July 8 – July 26, 2002
Briefs re: Phase 2 Issues	Opening Briefs: August 16, 2002 Reply Briefs: August 30, 2002
Draft Decision re: Phase 2	October 2002

On January 11, 2002, Pacific filed a motion to revise the schedule for Phase 2 to provide TD with four additional weeks to file its audit report. Pacific

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<sup>1</sup> Order Instituting Rulemaking 01-09-001 and Order Instituting Investigation 01-09-002, pp. 6-7 and Appendix A, pp. A-2 and A-3.

states that the additional time is necessary because it has not yet been able to respond to all of the audit-related data requests it has received from TD. Pacific represents that it has responded to approximately 88% of the 1,297 data requests that it has received thus far, but that it cannot respond to all of the remaining data requests in time for the responses to be reviewed, analyzed, and reflected in TD's audit report that is due on January 31, 2002. Pacific believes that extending the Phase 2 schedule by four weeks will provide adequate time for Pacific to respond to outstanding data requests, and for the auditors to analyze the responses and incorporate the responses in the final audit report.<sup>3</sup>

The Office of Ratepayer Advocates (ORA) filed a response to Pacific's motion on January 22, 2002. ORA argues that Pacific's motion should be denied because (1) Pacific lacks standing to request a delay in TD's audit, (2) granting the motion would jeopardize the Commission's ability to complete this proceeding within 18 months as contemplated by Senate Bill (SB) 960, (3) extending the schedule would strain ORA's limited resources, and (4) Pacific should have responded sooner to TD's data request.

The Utility Reform Network (TURN) filed a response to Pacific's motion on January 28, 2002. TURN argues that Pacific's motion should be denied because (1) Pacific lacks standing to request a delay in TD's audit, (2) extending Phase 2 by four weeks would adversely affect TURN's ability to participate in Phase 2 due to the schedule constraints of TURN's expert witness, and (3) Pacific

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<sup>2</sup> Assigned Commissioner's Ruling Determining the Category, Scope, Schedule, Need for Hearing, and the Principal Hearing Officer for the Proceeding, Appendix A, p. A-2.

<sup>3</sup> Pacific only asks for modification of the Phase 2 schedule with respect to consideration of TD's audit. Pacific believes that the current schedule can remain in effect for purposes of the Commission's review of service quality.

should have responded sooner to TD's data request. TURN also states that those parties that have signed Pacific's Non-Disclosure Agreement should be able to receive a copy of TD's audit report as soon as it is available.

TD submitted a letter responding to Pacific's motion on January 28, 2002. TD states that its audit has been delayed by the length of time it has taken Pacific to respond to TD's data requests. According to TD, the average response time has been 75 days. TD also represents that there were approximately 201 outstanding data requests as of January 7, 2002, and that the average age of these requests was 128 days. TD adds that on numerous occasions it has had to send multiple data requests because Pacific's responses were incomplete or unresponsive.

TD states that it remains to be seen if Pacific will actually provide complete and timely responses to the outstanding data requests. TD recommends, therefore, that it issue an audit report based on the information that it has in hand, and that it supplement its report if and when Pacific provides data responses that materially affect TD's audit findings and conclusions.

Finally, TD requests an extension of time from January 31, 2002, to February 22, 2002, to file its audit report. TD asserts that it needs additional time in order to complete, reproduce, and distribute the report. TD states that if it is granted an extension, it will still make every effort to file the report as close as possible to the original due date of January 31, 2002.

## **Discussion**

There is no reason to doubt TD's assertion that it needs additional time to file its audit report. Therefore, to provide TD with more time, the schedule for Phase 2 is revised as follows:

<b>Revised Phase 2 Schedule</b>	
<b>Event</b>	<b>Date</b>
Pacific and Verizon File Service Quality Compliance Reports	January 15, 2002
TD Files Pacific Audit Report.	February 22, 2002
Pacific Files Response to TD's Audit Report	April 15, 2002 (Deadline for Pacific's response will not change if TD files its audit report earlier than Feb. 22, 2002.)
Parties Submit Surveys on Service Quality	April 15, 2002
Written Testimony	Opening Testimony: May 15, 2002 Reply Testimony: June 7, 2002
Motions to Strike	Motions to Strike: June 28, 2002 Replies to Motions: July 12, 2002
Evidentiary Hearings	July 22 – August 2, 2002
Briefs re: Phase 2 Issues	Opening Briefs: August 16, 2002 Reply Briefs: August 30, 2002
Draft Decision re: Phase 2	October 2002

In order to keep this proceeding on track for finishing within 18 months as contemplated by SB 960, the revised schedule adopted by this ruling reduces by five days the amount of time that Pacific has to respond to TD's audit report<sup>4</sup> as well as the amount of time that parties have to file Phase 2 opening briefs. Reducing the amount of time that Pacific has to respond to TD's audit report

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<sup>4</sup> This ruling reduces the amount of time that Pacific has to respond to TD's audit report from 57 days to 52 days.

should not unduly disadvantage Pacific, since Pacific will have additional opportunities to respond via written testimony and briefs.

TURN's concern that revising the Phase 2 schedule will impede its ability to participate in this proceeding is well taken. However, the public interest is better served by revising the schedule to provide TD with adequate time to complete its audit report than retaining the existing schedule so as not to impede TURN's ability to participate. Nonetheless, TURN may work with all other parties to reach an agreement on a revised schedule that satisfies TURN's needs and stays within the overall 18-month deadline for completing this proceeding. If such an agreement is reached, TURN may file a motion to have it adopted.

After TD has completed its audit report, it should serve a non-redacted copy of the report to the assigned Commissioner, the assigned Administrative Law Judge (ALJ), ORA, Pacific, and any party that has signed Pacific's Non-Disclosure Agreement.<sup>5</sup> Pacific will have three business days to review the report for confidential information and submit proposed redactions to TD.<sup>6</sup> In identifying the proposed redactions, Pacific should adhere to the standards for placing information under seal that are contained in the ruling issued by the assigned ALJ on January 8, 2002. Before the audit report becomes part of the formal file in this proceeding, it will be Pacific's obligation to file a timely motion to place the redacted portions of the audit report under seal.

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<sup>5</sup> As is the case with pre-filed testimony, the report should be served on the parties, but not filed with the Docket Office. Pacific should provide TD with written notice anytime Pacific obtains a signed non-disclosure agreement from a party that seeks a copy of TD's non-redacted audit report.

<sup>6</sup> Nothing in this ruling limits the discretion of the Commission to release a summary of the audit report – with any potentially confidential information redacted – to the parties and the public, prior to Pacific's submission of proposed redactions.

TD should prepare a redacted version of its full audit report as soon as possible. Once the redacted version is available, TD should provide a copy to the assigned Commissioner, the assigned ALJ, ORA, and any party that has previously requested a copy of the redacted report. TD should also file and serve notice that both redacted and non-redacted versions of its report are available. TD shall thereafter provide a copy of its redacted audit report to any party that requests a copy.

TD may supplement its audit report if it receives data responses from Pacific that TD was unable to incorporate into its audit report released on or before February 22, 2002. When issuing a supplement, TD and Pacific should follow the previously described protocols. Pacific may file and serve comments on any supplement no later than 10 days after the supplement is issued. Parties may address any supplements in their Phase 2 testimony.

Therefore, **IT IS RULED** that:

1. The schedule for Phase 2 is revised as set forth in the body of this ruling.
2. The Utility Reform Network (TURN) may file a motion that seeks to revise the schedule for this proceeding in a way that satisfies TURN's needs. The proposed schedule must (i) have the unanimous consent of the other parties, and (ii) stay within the overall 18-month deadline for completing this proceeding.
3. The Telecommunications Division (TD) and Pacific Bell Telephone Company (Pacific) shall follow the protocols regarding TD's audit report, and any supplements thereto, that are described in the body of this ruling.
4. Pacific shall promptly provide written notice to TD any time Pacific obtains a signed non-disclosure agreement from a party that seeks to obtain a copy of TD's non-redacted audit report and any supplements thereto.

5. Pacific's motion to extend the schedule for Phase 2 is granted and denied to the extent set forth in the previous ruling paragraphs.

Dated January 31, 2002, at San Francisco, California.

/s/ TIMOTHY KENNEY

Timothy Kenney  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Pacific Bell Telephone Company's (Pacific's) Motion to Modify the Schedule for Phase 2 on all parties of record in this proceeding or their attorneys of record.

Dated January 31, 2002, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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